



700 Thirteenth Street, N.W., Suite 600

Washington, D.C. 20005-3960

PHONE: 202.654.6200

FAX: 202.654.6211

www.perkinscoie.com

Brian G. Svoboda

PHONE: (202) 434-1654

FAX: (202) 654-9150

EMAIL: BSvoboda@perkinscoie.com

June 12, 2014

**VIA ELECTRONIC AND U.S. MAIL**

Mr. Thomas Hintermister  
Assistant Staff Director, Audit Division  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Dear Mr. Hintermister:

On behalf of the Democratic Party of Wisconsin and its treasurer (collectively, "DPW"), we write to respond to the Interim Audit Report of the Audit Division regarding DPW's 2012 election cycle activities. At all steps during the audit process, DPW has complied with the requests and recommendations of the Audit Division, and is taking additional steps to strengthen its compliance with the Federal Election Campaign Act of 1971, as amended ("the Act"), and with Federal Election Commission ("Commission") regulations, as described below.

**FACTUAL BACKGROUND**

The DPW takes its compliance obligations seriously, and makes best efforts to fully and accurately report its campaign finance activities. However, during the 2011-12 election cycle, the DPW was engaged in an unprecedented number of nonfederal elections. The nonfederal elections arose unexpectedly as a result of the filing of petitions that led to the recall of 13 state senators, the lieutenant governor, and the governor. These recall elections garnered nationwide attention at the time due to Wisconsin Governor Scott Walker's proposed budget bill and the large public demonstrations against it.

The DPW was engaged in each of the following nonfederal elections in 2011 and 2012:

- On April 5, 2011, Wisconsin held a General Election for one state supreme court seat. The supreme court election also received nationwide publicity due to the candidates' positions on Governor Walker's proposed budget reforms.

LEGAL122371379.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK  
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

- On May 3, 2011, Wisconsin held a Special Election for one state assembly district.
- On July 12, 2011, Wisconsin held Primary Recall Elections for six state senate districts.
- On July 19, 2011, Wisconsin held a General Recall Election for one state senate district, and Primary Recall Elections for two state senate districts.
- On August 9, 2011, Wisconsin held General Recall Elections for six state senate districts.
- On August 16, 2011, Wisconsin held General Recall Elections for two state senate districts.
- On November 8, 2011, Wisconsin held a Special Election for one state assembly district;
- On February 21, 2012, Wisconsin held its Spring Primary Election for various local elections including county boards and city councils.
- On April 3, 2012, Wisconsin held its Spring General Election for various local elections including county boards and city councils. Wisconsin also held its federal Presidential Preference Vote on this date.
- On May 8, 2012, Wisconsin held Primary Recall Elections for four state senate districts, lieutenant governor, and governor.
- On June 5, 2012, Wisconsin held General Recall Elections for four state senate districts, lieutenant governor, and governor.
- On August 14, 2012, Wisconsin held its Fall Primary Elections for state assembly and state senate races across the state. Federal primary elections were also held on this date.
- On November 6, 2012, Wisconsin held General Elections for state assembly, state senate, federal Congressional, federal Senate, and Presidential elections. The Presidential, Senate and Congressional races were especially competitive, as were several of the nonfederal elections. Additionally, party control of the state senate was at stake.

As it has previously reported to the Audit Division, the DPW had five paid staff members and several volunteer assistants during the 2011-12 election cycle whose primary responsibilities included ensuring the committee's compliance with Commission regulations. DPW staff members also attended three separate FEC training seminars and webinars in 2011 and 2012. Since the 2012 election cycle, DPW staff have continued to attend training seminars or webinars and have worked to refine their internal compliance practices. Nevertheless, the level and

Mr. Thomas Hintermister

June 12, 2014

Page 3

complexity of the DPW's activity, combined with the unanticipated level of nonfederal activity, placed extraordinary burdens on these personnel.

## **DISCUSSION**

### **Finding 1. Misstatement of Financial Activity**

DPW has worked closely with the auditors since receiving the Interim Audit Report and is amending its reports to conform in all respects to the auditors' recommendations.

While the DPW does not contest the discrepancies identified by the auditors as part of the "misstatement" finding, the nature of these discrepancies in many cases involved the form of the disclosure provided, not its substance. For example, DPW reported vendor refunds as negative entries on Schedule B for Itemized Disbursements. These transactions – which totaled \$57,545 for 2011 and \$15,312 for 2012 – were, in fact, disclosed on the public record before the audit was initiated. However, the auditors assert that these amounts would have been more properly reported as offsets to operating expenditures on Schedule A. The DPW respectfully submits that the corresponding amounts of activity are not properly included in the cumulative dollar amount of the asserted misstatement.

Second, the Interim Audit Report states that, on a single monthly report, the DPW correctly reported transfers from two joint fundraising representatives, but incorrectly reported the underlying individual joint fundraising contributions. This reporting error occurred simply because the wrong box was selected in the DPW's campaign finance reporting software used to prepare the DPW's reports. As a result of this clerical mistake, \$457,814 in joint fundraising contributions were not reported as memo entries under the properly reported joint fundraising transfers, but were instead reported as direct contributions to the DPW. Again, these contributions – which account for over 58% of the alleged misstatement amount in 2012 – were reported to the Commission on a timely, individualized basis, even if the DPW's cash position was incorrectly stated because of the error.

### **Finding 2. Recordkeeping for Employees**

The Interim Audit Report correctly contains no finding that the DPW funded payroll for federal election activity with impermissible nonfederal funds.

Employee recordkeeping appears to be one of the most common findings in recent Commission audits of state and local parties, and the scope of the Commission's jurisdiction over a party's payments to employees with nonfederal funds for exclusively nonfederal work has been a subject of recent Commission debate. The DPW presents a prime example of how these burdens affect

Mr. Thomas Hintermister

June 12, 2014

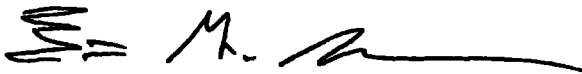
Page 4

heavily nonfederally active elections. The Interim Audit Report states that the DPW had \$1,434,708 in such purely nonfederal payroll.

Nonetheless, the DPW acknowledges the need to improve its system for maintaining monthly employee timesheets. The DPW has developed a web-based system for employees to track and enter time; a copy of screen shots of the recordkeeping system the DPW intends to use are being send to the Audit Division under separate cover. The web-based form complies with the requirements of Commission regulations, and is straightforward and convenient for DPW staff to complete by simply logging on to the proper website. The web-based system also makes it easier for DPW compliance staff to track employee compliance and follow up with employees who may become delinquent in their timekeeping. Finally, keeping employee time sheets in an electronic format helps ensure the records will not be lost or misplaced.

We appreciate the Commission's attention to our response.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Svoboda", followed by a long horizontal flourish.

Brian G. Svoboda

Tyler J. Hagenbuch

Counsel to the Democratic Party of Wisconsin